IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNILOC USA, INC., and UNILOC LUXEMBOURG, S.A., Plaintiffs, v. ZENPAYROLL, INC. d/b/a GUSTO, Defendant.	§ § § § § § § § § § § §	Civil Action No. 2:17-cv-00409 PATENT CASE JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. ("Uniloc USA") and Uniloc Luxembourg, S.A. ("Uniloc Luxembourg") (together, "Uniloc"), as and for their complaint against defendant, ZenPayroll, Inc. d/b/a Gusto ("Gusto"), allege as follows:

THE PARTIES

1. Uniloc USA is a Texas corporation having a principal place of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano Texas 75024. Uniloc USA also maintains a place of business at 102 N. College, Suite 603, Tyler, Texas 75702.

2. Uniloc Luxembourg is a Luxembourg public limited liability company having a principal place of business at 15, Rue Edward Steichen, 4th Floor, L-2540, Luxembourg (R.C.S. Luxembourg B159161).

3. Upon information and belief, Gusto is a Delaware corporation having a principal place of business in Denver, Colorado and offers its products and services, including those accused herein of infringement, to customers and/or potential customers located in Texas and in the judicial

Eastern District of Texas. Gusto may be served with process through its registered agent: VCorp Services, LLC, 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805.

JURISDICTION AND VENUE

4. Uniloc brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Gusto is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, and/or has purposely transacted business involving the accused products in Texas and this judicial district.

6. According to its website (https://gusto.com/), Gusto does business in Texas:

> Founded in 2011, Gusto provides payroll, benefits and HR to modern companies. We have offices in San Francisco and Denver, but thanks to our 40,000 small business customers and their employees, there's a little piece of us in all 50 states.

> **Does Gusto support my state?**
>
> Payroll, 401(k), and workers' comp insurance is offered nationwide.
>
> Benefits are available in California, Colorado, Florida, Illinois, Massachusetts, New Jersey, New York, Ohio, Texas and Washington, with more states coming soon.

7. Gusto is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and judicial district, including: (A) at least part of its past infringing activities, (B) regularly doing and/or soliciting business in Texas and/or (C) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 6,324,578)

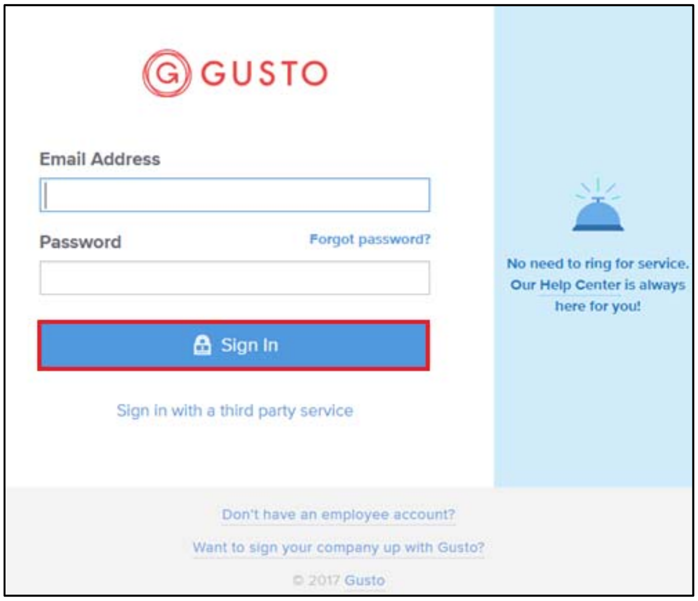
8. Uniloc incorporates paragraphs 1-7 above by reference.

9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,324,578 ("the '578 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR MANAGEMENT OF CONFIGURABLE APPLICATION PROGRAMS ON A NETWORK that issued on November 27, 2001. A true and correct copy of the '578 Patent is attached as Exhibit A hereto.

10. Uniloc USA is the exclusive licensee of the '578 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

11. Gusto maintains a network of high-security, access-controlled data centers that host, *inter alia*, a platform through which it offers and provides products and services such as Payroll, Health Benefits and Human Resources services ("Gusto platform" or "platform").

12. A Gusto customer launches the Gusto application by logging in:


GUSTO
Email Address
Password
Forgot password?
Sign In
Sign in with a third party service
No need to ring for service. Our Help Center is always here for you!
Don't have an employee account?
Want to sign your company up with Gusto?
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13. When a user logs in to Gusto, the user interface provides a plurality of options to select from, such as Run Payroll and Benefits

14. Once granted access to the Gusto platform, an employee is presented with a plurality of user-configurable preferences such as change password and change payment method.

15. The Gusto platform instructs users how to configure preferences such as changing email and password and adding a beneficiary.

16. The Gusto platform provides a plurality of administrator-configurable preferences such as enabling AutoPilot™ payroll service, adding new employees setting employee compensation and allowing employees to self-onboard.

17. Gusto stores information provided by customers via the Gusto platform to perform operations requested by customers such as providing the number of employees and payroll statistics.

18. A user may request a workers' compensation policy from Gusto via the Gusto platform and Gusto will respond to such a request by providing the user with policy information.

19. Gusto has directly infringed, and continues to directly infringe one or more claims of the '578 Patent, including at least claims 17-21, 23-24, 26-29, 31-36, 39, 41 and 44 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Gusto platform in the United States during the pendency of the '578 Patent which software and associated architecture *inter alia* allows for installing an application program having a plurality of configurable preferences and authorized users on a server coupled to a network, distributing an application launcher program to a client, obtaining a user set of the configurable preferences, obtaining an administrator set of configurable preferences and executing the

application program using the user and administrator sets of configurable preferences responsive to a request from a user.

20. In addition, should the Gusto platform be found to not literally infringe the asserted claims of the ’578 Patent, the product would nevertheless infringe the asserted claims of the ’578 Patent. More specifically, the platform performs substantially the same function (obtaining user and administrator sets of configurable preferences), in substantially the same way (via a user and administrator), to yield substantially the same result (executing an application program using the configurable preferences in response to a request from a user on a network). Gusto would thus be liable for direct infringement under the doctrine of equivalents.

21. Gusto has indirectly infringed and continues to indirectly infringe at least claims 17-21, 23-24, 26-29, 31-36, 39, 41 and 44 of the ’578 Patent by, among other things, actively inducing the using, offering for sale, selling, or importing the Gusto platform. Gusto’s customers who use the platform in accordance with Gusto’s instructions directly infringe one or more of the foregoing claims of the ’578 Patent in violation of 35 U.S.C. § 271. As set forth *inter alia* above, Gusto directly and/or indirectly intentionally instructs its customers to infringe through training videos, demonstrations, brochures, installation and/or user guides for the accused platform, such as those located at the following:

- www.gusto.com
- www.youtube.com, including:
- www.youtube.com/user/zenpayroll
- www.youtube.com/watch?v=9lZsIKkZyM0
- www.youtube.com/watch?v=hc3_4fkSixE
- www.youtube.com/watch?v=T4olEQvSwx4

Gusto is thereby liable for infringement of the ’578 Patent under 35 U.S.C. § 271(b).

22. Gusto will have been on notice of the ’578 Patent since, at the latest, the service of this complaint. By the time of trial, Gusto will have known and intended (since receiving such notice) that its continued actions would actively induce the infringement of one or more of claims 17-21, 23-24, 26-29, 31-36, 39, 41 and 44 of the ’578 Patent.

23. Gusto may have infringed the ’578 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Gusto platform. Uniloc reserves the right to discover and pursue all such additional infringing software.

24. Uniloc has been damaged by Gusto’s infringement of the ’578 Patent.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,069,293)

25. Uniloc incorporates paragraphs 1-7 above by reference.

26. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,069,293 (“the ’293 Patent”), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR DISTRIBUTION OF APPLICATION PROGRAMS TO A TARGET STATION ON A NETWORK that issued on June 27, 2006. A true and correct copy of the ’293 Patent is attached as Exhibit B hereto.

27. Uniloc USA is the exclusive licensee of the ’293 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

28. Gusto has directly infringed, and continues to directly infringe one or more claims of the ’293 Patent, including at least claims 1, 12 and 17 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Gusto platform in the United States during the pendency of the ’293 Patent which software and associated

architecture *inter alia* allow for providing an application program for distribution to a network server, specifying source and target directories for the program to be distributed, preparing a file packet associated with the program including a segment configured to initiate registration operations for the application program at a target on-demand server and distributing the file packet to the target on-demand server to make the program available for use by a client user.

29. In addition, should the Gusto platform be found to not literally infringe the asserted claims of the ’293 Patent, the product would nevertheless infringe the asserted claims of the ’293 Patent. More specifically, the accused platform performs substantially the same function (distributing an application program to a target on-demand server on a network), in substantially the same way (via initiation of registration operations for the application program at the target on-demand server), to yield substantially the same result (making the application program available for use by a user at a client). Gusto would thus be liable for direct infringement under the doctrine of equivalents.

30. Gusto has indirectly infringed and continues to indirectly infringe at least claims 1, 12 and 17 of the ’293 Patent by, among other things, actively inducing the using, offering for sale, selling, or importing the Gusto platform. Gusto’s customers who use the platform in accordance with Gusto’s instructions directly infringe one or more of the foregoing claims of the ’293 Patent in violation of 35 U.S.C. § 271. As set forth *inter alia* above, Gusto directly and/or indirectly intentionally instructs its customers to infringe through training videos, demonstrations, brochures, installation and/or user guides for the accused platform, such as those located at the following:

- www.gusto.com
- www.youtube.com, including:
- www.youtube.com/user/zenpayroll

- www.youtube.com/watch?v=9lZsIKkZyM0
- www.youtube.com/watch?v=hc3_4fkSixE
- www.youtube.com/watch?v=T4olEQvSwx4

Gusto is thereby liable for infringement of the ’293 Patent under 35 U.S.C. § 271(b).

31. Gusto will have been on notice of the ’293 Patent since, at the latest, the service of this complaint. By the time of trial, Gusto will have known and intended (since receiving such notice) that its continued actions would actively induce the infringement of one or more of claims 1, 12 and 17 of the ’293 Patent.

32. Gusto may have infringed the ’293 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Gusto platform. Uniloc reserves the right to discover and pursue all such additional infringing software.

33. Uniloc has been damaged by Gusto’s infringement of the ’293 Patent.

COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 6,510,466)

34. Uniloc incorporates paragraphs 1-7 above by reference.

35. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,510,466 (“the ’466 Patent”), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR CENTRALIZED MANAGEMENT OF APPLICATION PROGRAMS ON A NETWORK that issued on January 21, 2003. A true and correct copy of the ’466 Patent is attached as Exhibit C hereto.

36. Uniloc USA is the exclusive licensee of the ’466 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

37. Gusto has directly infringed, and continues to directly infringe one or more claims of the ’466 Patent, including at least claims 15-20, 22-23, 30-33 and 35-36, literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Gusto platform in the United States during the pendency of the ’466 Patent which software and associated architecture *inter alia* allows for installing application programs on a server, receiving a login request, establishing a user desktop interface, receiving a selection of one of the programs displayed in the user desktop interface and providing an instance of the selected program for execution.

38. In addition, should the Gusto platform be found to not literally infringe the asserted claims of the ’466 Patent, the product would nevertheless infringe the asserted claims of the ’466 Patent. More specifically, the accused platform performs substantially the same function (selection of an application program), in substantially the same way (via an established user desktop interface), to yield substantially the same result (providing the program for execution). Gusto would thus be liable for direct infringement under the doctrine of equivalents.

39. Gusto has indirectly infringed and continues to indirectly infringe at least claims 15-20, 22-23, 30-33 and 35-36 of the ’466 Patent by, among other things, actively inducing the using, offering for sale, selling, or importing the Gusto platform. Gusto’s customers who use the accused platform in accordance with Gusto’s instructions directly infringe one or more of the foregoing claims of the ’466 Patent in violation of 35 U.S.C. § 271. As set forth *inter alia* above, Gusto directly and/or indirectly intentionally instructs its customers to infringe through training videos, demonstrations, brochures, installation and/or user guides for the accused platform, such as those located at the following:

- www.gusto.com

- www.youtube.com, including:
- www.youtube.com/user/zenpayroll
- www.youtube.com/watch?v=9lZsIKkZyM0
- www.youtube.com/watch?v=hc3_4fkSixE
- www.youtube.com/watch?v=T4olEQvSwx4

Gusto is thereby liable for infringement of the ’466 Patent under 35 U.S.C. § 271(b).

40. Gusto will have been on notice of the ’466 Patent since, at the latest, the service of this complaint. By the time of trial, Gusto will have known and intended (since receiving such notice) that its continued actions would actively induce the infringement of one or more of claims 15-20, 22-23, 30-33 and 35-36 of the ’466 Patent.

41. Gusto may have infringed the ’466 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Gusto platform. Uniloc reserves the right to discover and pursue all such additional infringing software.

42. Uniloc has been damaged by Gusto’s infringement of the ’466 Patent.

PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against Gusto as follows:

(A) finding that Gusto has infringed the ’578 Patent, the ’293 Patent and the ’466 Patent;

(B) awarding Uniloc its damages suffered as a result of Gusto’s infringement of the ’578 Patent, the ’293 Patent and the ’466 Patent;

(C) awarding Uniloc its costs, attorneys’ fees, expenses and interest, and

(D) granting Uniloc such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.

Date: May 9, 2017

Respectfully submitted,

/s/ Edward R. Nelson III

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